IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 621 OF 2007

Bismillakhan Hussainkhan & Anr. vs. Halandevi O. Gautam & Ors.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
DECEMBER 20, 2007.

Heard Shri Samudra, learned counsel for the appellants – original plaintiffs.

The gross abuse of process of Court is apparent from the judgment of appellate Court. Number of adjournments were taken on frivolous grounds and then advocate was sought to be changed. The new advocate was also accommodated by the trial Court to give him time to prepare the matter twice. Thereafter when the matter was called out, the said advocate tried to obtain adjournment by contending that earlier advocate was not available and he needed to consult him. The Court below rejected that application. Thereafter, the Court has disposed of the suit for want of prosecution. Immediately thereafter, after the working hours of court,

the application was filed making some allegations against the Presiding Officer and that application has been rejected by the Court observing that it had disposed of the suit on merits and not for default. It also observed that there were 9 applications for adjournment already granted and tenth application was rejected. The trial Court has given reason in each application. This order was then challenged in appeal and appeal has been dismissed by the Principal District Judge, Akola, thereafter this Second Appeal is filed.

Shri Samudra, learned counsel contends that the order dated 23.9.2005 passed below Exh. 1 is not an order dismissing suit on merits. He further states that in view of the orders below Exh. 153 passed on same date, the Court below could not have dismissed the suit on merits and Court ought to have proceeded under Order 17, Rule 2 and could not have taken recourse to Order 17, Rule 3 of Civil Procedure Code. He points out the judgment of this Court in the case of Prashant vs. Municipal Corporation, Greater Bombay, reported at 2002(2) Mh. L.J. 154, in support of his contention. He further

contends that suit can be restored and directed to be disposed of in time bound manner.

The appellate Court has given elaborate reasons and none of those reasons are shown to be either erroneous or perverse. The abuse of process is apparent and again a technical objection, misconceived on facts and in law, is sought to be raised only with a view to restore Civil Suit.

I do not find any substantial question of law arising in the matter. Though I am inclined to dismiss the Second Appeal with heavy cost, I am refraining myself from imposing cost. Second Appeal is accordingly dismissed. No order as to costs.

JUDGE

*GS.